



**DEPARTMENT FOR TRADE
PROTECTION**

**MINISTRY OF ECONOMIC DEVELOPMENT
AND TRADE OF UKRAINE**

UKRAINE

REPORT No.

**ON THE APPLICATION FOR INITIATION OF AN ANTI-
SUBSIDY INVESTIGATION CONCERNING IMPORTS
OF [INSERT PRODUCT] ORIGINATING IN, OR
EXPORTED FROM, [INSERT COUNTRY(IES)]**

[Date]

LEGAL BASIS AND RECOMMENDATION

(1) In accordance with Article 15(1) of the Law "On protection of national industry against subsidized imports", on [insert date] [insert name of the applicant] submitted an application for the initiation of an anti-subsidy investigation concerning the imports of [insert product] originating in, or exported from, [insert country(ies)]. The Department for Trade Protection of the Ministry of Economic Development and Trade **found** that this application is submitted [by] [on behalf of] the domestic industry.

(2) In terms of Article 15(13), first sentence, of the Law, the Department herewith submits to the Commission the report on the results of the assessment of the application for the initiation of an anti-subsidy investigation concerning the imports of [insert product] originating in, or exported from, [insert country(ies)].

(3) In terms of Article 15(2) of the afore-mentioned Law, the Department analysed the information submitted by the applicant and **concluded** that the application, as amended and supplemented, contains all reasonably available information to the applicant (among that enumerated in numerals (1) to (5) of Article 15(2)).

(4) In accordance with Articles 15(3) and 15(8) of the said Law and after having carefully examined all of the information and evidence properly before it, the above-referred Department has cumulatively **found** that:

- (a) the application is made by, or on behalf of, the domestic industry; and
- (b) there is sufficient evidence of subsidisation, injury and causal link,

and on the basis of those findings, the Ministry herewith **recommends** the Commission to initiate an anti-subsidy investigation concerning the imports of [insert product] originating in, or exported from, [insert country(ies)].

(5) Lastly, in terms of Article 15(13), second sentence, of the Law, the Commission must decide on the initiation of the investigation within 30 days counted from the date of filing of the application, i.e. no later than by [insert date].

- 1. INCLUDE THE INFORMATION MARKED IN YELLOW**
- 2. ADJUST THE TEXT IN CASE THAT THE DEPARTMENT WERE TO FIND THAT THE REQUIREMENTS OF ARTS. 15(3) OR (8) ARE NOT MET**
- 3. ADJUST THE TEXT IN CASE OF SELF-INITIATION**

TEXT MARKED IN BOLD AND YELLOW ARE INSTRUCTIONS ON THE GENERAL CONTENT OF THE SECTION.

TEXT MARKED IN YELLOW IS GIVEN AS A MERE EXAMPLE OF THE POSSIBLE PRESENTATION OF CONTENT. IT SHOULD BE REPLACED

UNMARKED TEXT MAY BE USED AS STANDARD TEXT FOR ANY INITIATION REPORT.

THIS REPORT CAN BECOME SUBSUMED INTO THE NOTICE OF INITIATION OF AN INVESTIGATION, OR PUBLISHED SEPARATELY IN THE WEBSITE OF THE MINISTRY

SUMMARY

[IN THIS SECTION INCLUDE A VERY SHORT SUMMARY AS FOLLOWS:]

1. On 1 January 2008, the Department for Trade Protection (hereinafter “the Department”) of the Ministry of Economic Development and Trade (hereinafter “the Ministry”) received a written application from Company A (hereinafter “the applicant”) of [insert city] alleging that glass bottles (“the product concerned”) originating in, or exported from, [insert country(ies)] are imported at subsidised prices and causing injury to the Ukrainian industry. The written application was submitted on behalf of the two Ukrainian glass bottle producers. On 15 February 2008, and after the submission of additional information by the applicant, the Department informed the applicant that the application was properly documented.
2. On [insert date], the Ministry notified the Government(s) of [insert country(ies)] that a properly documented application had been received. In the same communication, as mandated by Article 13.1 of the WTO Agreement Subsidies and Countervailing Measures, the Ministry invited the Government of [insert country(ies)] to hold consultations with the aim of clarifying the situation as to the matters covered by the application filed by [insert applicant] and arriving at a mutually agreed solution. Following this invitation, consultations were held on [include date]. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of the country(ies) concerned in regard to the allegations contained in the application regarding the lack of countervailability of the schemes.
3. The applicant provided evidence that the product concerned from [insert country(ies)] is being imported at subsidised prices. The evidence also discloses a reasonable indication that imports at subsidised prices are causing injury to the Ukrainian glass bottle industry.

INTERESTED PARTIES

[SUMMARISE IN THIS SECTION THE INTERESTED PARTIES MENTIONED IN THE APPLICATION, INCLUDING THEIR CONTACT DETAILS, AS WELL AS THOSE THAT IN THE DEPARTMENT’S OPINION MIGHT ALSO BE INTERESTED. LIST SEPARATELY THOSE THAT THE DEPARTMENT HAS IDENTIFIED AND STATE HOW THE DEPARTMENT CAME TO KNOW ABOUT THEM, FOR INSTANCE THROUGH INFORMATION FROM THE STATE STATISTICAL SERVICE, INTERNET, ETC.]

Applicant

4. The applicant submitted the application on behalf of two companies which are all producers of the like product. The addresses and contact details of each of these companies are as follows:

[List the applicants: Name of company, contact person and full contact details]

Other domestic producers: [keep if relevant]

5. In addition to the above, information contained in the application, checked against the Department's sources [name these sources], shows that there are two other known producers of the like product in Ukraine. The addresses and contact details of each of these companies are as follows:

[Name of company, contact person and full contact details]

Exporters

6. The applicant originally submitted that there were two known producers/exporters in [insert country(ies)]. These are as follows:

[Name of company, contact person and full contact details]

7. Following the Department's request dated 10 January 2008, the applicant identified four additional exporters that appear to have exported glass bottles during 2007. These are as follows:

[Name of company, contact person and full contact details]

8. The Department has examined customs import data from the State Statistical Service of Ukraine and, as a result of this, it has identified two exporters – in addition to those identified by the applicant – that have exported the product concerned to Ukraine during the past 3 years (2005 to 2007):

[Name of company, contact person and full contact details]

9. The Department has obtained their contact details from the internet.

Importers

10. The applicant submitted that there were ten known importers of the product concerned from [insert country(ies)]. These are as follows:

[Name of company, contact person and full contact details]

11. The Department has examined customs import information from the State Statistical Service and, as a result of this, it has identified five Ukrainian companies – in addition to those identified by the applicant – that have imported the product concerned during the past 3 years (2005 to 2007):

[Name of company, contact person and full contact details]

Users

12. The applicant submitted the names and contact details of ten large industrial users of the product concerned. These are as follows:

[Name of company, contact person and full contact details]

13. The Department will contact in addition the following association of consumers:

[Name of association, contact person and full contact details]

PRODUCT UNDER INVESTIGATION

[IN THIS SECTION IDENTIFY WITH AS MUCH DETAIL AS POSSIBLE THE PRODUCT CONCERNED, I.E. THE PRODUCT IMPORTED INTO UKRAINE. PROVIDE ANY ADDITIONAL INFORMATION (PHYSICAL CHARACTERISTICS, CHEMICAL COMPOSITION, RAW MATERIALS, PRODUCTION PROCESS, USES, CONSUMER PREFERENCES, ETC.) THAT MAY BE HELPFUL TO DETERMINE THE LIKE PRODUCT. SUMMARISE THE INFORMATION IN THE APPLICATION AND ASK THE APPLICANT TO PROVIDE YOU MORE INFORMATION, IF YOU FEEL HIS DESCRIPTION IS NOT ADEQUATE. YOU MAY ALSO USE YOUR OWN SOURCES, BUT IN THIS CASE STATE WHICH SOURCES HAVE BEEN USED]

Definition

14. For purposes of this investigation, the product concerned is defined as:

“**add description**”

Physical characteristics

15.

[DESCRIBE IN DETAIL THE INPUTS/COMPONENTS USED IN THE PRODUCTION OF THE IMPORTED GOOD REFERRING TO INFORMATION AVAILABLE IN THE APPLICATION AS WELL AS OBTAINED THROUGH OTHER SOURCES (INTERNET, ETC.)]

Production Process

16. **Glass bottles** are manufactured by all producers generally in the same manner. Raw material....

[DESCRIBE IN DETAIL THE PRODUCTION PROCESS REFERRING TO INFORMATION AVAILABLE IN THE APPLICATION AS WELL AS OBTAINED THROUGH OTHER SOURCES (INTERNET, ETC.)]

Uses and consumer preferences

17. The product concerned is used in....

[DESCRIBE IN DETAIL THE USES AND PREFERENCES REFERRING TO INFORMATION AVAILABLE IN THE APPLICATION AS WELL AS OBTAINED THROUGH OTHER SOURCES (INTERNET, MARKET STUDIES, PUBIC BODIES ETC.)]

Classification of Imports

18. The product concerned is properly classified under the following codes of the Ukrainian Classification of Goods for Foreign Economic Activity 2015:

1701 1000 (Unit of Measure: ...)

[INCLUDE INFORMATION FROM THE APPLICATION AS WELL AS INFORMATION FROM STATE STATISTICAL SERVICE]

Conclusion

19. In light of the information available, and the analysis conducted by the Ministry, the investigated product is defined as:

[**insert definition**]

[IN CASE THE DEPARTMENT DEFINES THE INVESTIGATED PRODUCT DIFFERENTLY FROM THE APPLICATION, EXPLAIN THE REASON FOR THE CHANGE]

LIKE PRODUCT

[IN THIS SECTION, YOU HAVE TO ANALYSE WHETHER THE GOOD PRODUCED AND SOLD BY THE DOMESTIC INDUSTRY IN UKRAINE IS ALIKE TO THE PRODUCT CONCERNED. BASE YOURSELF ON THE INFORMATION IN THE APPLICATION AS WELL AS ON ANY OTHER INFORMATION YOU MAY GATHER FROM OTHER SOURCES. STATE THE SOURCES]

20. Article 1 of the Law "On protection of national industry against subsidized imports" defines "like product" as "an identical product i.e. alike in all respects to the product under consideration, or in the absence of such product, another product, which although not alike in all respects, has characteristics closely resembling those of the product under investigation".
21. Glass bottles produced by the domestic industry compete directly with and have the same end uses as the product concerned imported from [insert country(ies)]. The goods produced in Ukraine and in [insert country(ies)] are completely substitutable. Therefore, on the basis of the information before it at this stage, the Department has concluded that the glass bottles produced by the Ukrainian industry constitute a like product to the product concerned.

Conclusion

22. Having examined all information available, the Ministry has concluded in light of the analysis conducted that the product manufactured and sold by the applicant is **[not]** alike to the product concerned in accordance with the definition contained in Article 1 of the Law "On protection of national industry against subsidized imports".

DOMESTIC INDUSTRY

[IN THIS SECTION DESCRIBE THE DOMESTIC INDUSTRY, STARTING WITH THE APPLICANT COMPANY(IES), YEAR THEY STARTED OPERATIONS, NUMBER OF EMPLOYEES, MANUFACTURING PROCESSES, PRODUCTION. THEN, INCLUDE INFORMATION ON THE OTHER DOMESTIC PRODUCERS, THOSE NOT SUBMITTING THE APPLICATION. BASE YOURSELF ON INFORMATION FROM THE APPLICATION PLUS OTHER INFORMATION THAT THE DEPARTMENT MIGHT HAVE GATHERED OF ITS OWN. STATE SOURCES. IN THE NEXT SECTION EXAMINE WHETHER THE APPLICANTS HAVE STANDING UNDER PARAGRAPH 8 OF ARTICLE 15 OF THE LAW]

23. The applicant is a private limited company part of the Group... The company currently employs over 200 employees. The applicant's sales and marketing offices are located in...

Standing

24. The following conditions must be met in order to conclude that the applicant has standing under Article 15 paragraph 8 of the Law:

The application shall be considered to have been made by or on behalf of the national industry, if it is supported by those national producers, whose collective output constitutes more than 50 per cent of the total production of the like product produced by the portion of the national producers expressing either support for or opposition to the application. However, no investigation shall be initiated when national producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the national industry.

25. The verified information available at this stage of the investigation shows the following:

Company	Production (insert measurement unit)
Applicant	
Ukrainian producers that support the application:	
Company 1	
Company 2,	
Etc.	
Ukrainian producers that oppose the application:	
Company 3	
Etc.	
Ukrainian producers that have not expressed a position with respect to the application:	
Company 4	
Etc.	
Total national production	

[IN THE EVENT THAT SOME PRODUCERS ARE EXCLUDED BY VIRTUE OF THEIR RELATIONSHIP WITH IMPORTERS OR EXPORTERS, PRESENT THE FACTS AVAILABLE, THEIR ANALYSIS AND CONCLUSIONS]

Conclusion

26. Having examined the available verified information, the Ministry has concluded that the applicant has standing under Article 15 of the Law. First, no domestic producer has expressed its opposition to the application. Second, the applicant represents more than 70% of the total national production of the like product.

UKRAINIAN MARKET

[IN THIS SECTION YOU WILL IDENTIFY TOTAL CONSUMPTION OF THE LIKE PRODUCT IN UKRAINE. THIS IS NECESSARY FOR INJURY PURPOSES – IT IS ONE OF THE FACTORS – AND TO ASSESS THE DEVELOPMENT OF TRENDS OF SEVERAL OTHER FACTORS]

27. The applicant estimated the apparent Ukrainian market using import data from the State statistics Service of Ukraine, combined with its knowledge of the glass bottle imports and its own information from financial, sales ordering processing and customer relationship management systems.

28. The Department conducted its own analysis of imports of goods under customs code **xxxxxx**, based on a review of actual import data from **sampled** customs documentation. The review disclosed that some of the imports from **[insert country(ies)]** did not relate to the product concerned. The Department found that the applicant's estimates for imports from **[insert country(ies)]** were overstated while the opposite was found for imports from other countries. As a result, the Department's estimated apparent Ukrainian market is **larger** than the applicant's estimates. It is to be noted that the volume of imports from **[insert country(ies)]** account for a significant share of the total imports. The applicant has indicated that the applicant companies can compete with **[insert country(ies)]** manufacturers and other foreign suppliers of **glass bottles**.

29. The following table shows the market share of **glass bottles** in Ukraine. **[The confidential data is contained in Annexure XYZ of the application. Please see Annexure XYZ]**.

Estimated Ukrainian Market Share of Glass Bottles (units)				
Units (insert unit of measurement)	2005	2006	2007	
Imports from [insert country(ies)]				
Imports from Other Countries				
Total Imports				
Domestic Shipments – Applicant				
Domestic Shipments – Other Ukrainian Producers				
Estimated Total Market				

Estimated Ukrainian Market Share of Glass Bottles (% share)				
% share	2005	2006	2007	
Imports from [insert country(ies)]	%	%	%	%
Imports from Other Countries	%	%	%	%
Total Imports	%	%	%	%
Domestic Shipments – Applicant	%	%	%	%
Domestic Shipments – Other Ukrainian Producers	%	%	%	%
Estimated Total Market	100%	100%	100%	100%

Conclusion

30. **[insert conclusion based on the information available in the table]**.

EVIDENCE OF SUBSIDISATION

[IN THIS SECTION YOU WILL SUMMARIZE THE INFORMATION SUPPLIED BY THE APPLICANT TO PROVE THE ALLEGATION THAT THE PRODUCT CONCERNED IS BEING SUBSIDIZED. YOU WILL SET OUT YOUR FINDINGS REGARDING YOUR ANALYSIS ON THE ACCURACY OF THE EVIDENCE PROVIDED, AS WELL AS ON THE ADEQUACY OF THE INFORMATION SUBMITTED BY THE APPLICANT. EXPLAIN HOW YOU DOUBLE-CHECKED THE ACCURACY OF THE APPLICANT'S INFORMATION. ASSESS WHETHER FROM THE INFORMATION RECEIVED IT CAN BE CONCLUDED THAT THERE IS *PRIMA FACIE* EVIDENCE THAT THE IMPORTED PRODUCT IS BEING SUBSIDIZED. THE LAST PARAGRAPH OF THIS SECTION SHOWS THAT THE SUBSIDY MARGIN IS ABOVE *DE MINIMIS* AND THAT THE VOLUME OF SUBSIDIZED IMPORTS IS NOT NEGLIGIBLE]

31. The applicant claims that the Government of [...] grants specific subsidies to its producers of glass bottles. The applicant states that the factory of the producer/exporter of the imported product is located in the Free Trade Zone [...]. The scheme regulating such FTZ is provided in Decree No. 22-73, as amended by Decree No. 30-2008. Both documents have been submitted with the application. The applicant claims that incentives for the “Institution,” on the one hand, and for the “users,” on the other, are provided. According to the applicant, Articles 32 and 32 *bis* of the Decree set forth three types of incentives for “users.” The first incentive consists of an exemption from payment of Income Tax (duration: 10 years). The second incentive consists of an exemption from payment of VAT, duties and other charges applicable to the importation of goods entering the Free Zone. The third incentive is an exemption from VAT levied on taxable items within the Free Zone.
32. The applicant argues that each incentive separately constitutes a financial contribution by a government that confers a benefit, and that they are specific incentives as well. In particular, the applicant argues that from Decree No. 22-73 it can be gathered that incentives are contingent upon export performance and are, therefore, automatically specific.
33. The applicant submits the financial statements of the [...] exporter for 2008 on the basis of which it has determined that only considering the first incentive, the margin of subsidy—as a percentage of the CIF value of Ukrainian imports—is equivalent to 4.5%, that is to say, it is above the *de minimis* level.
34. The applicant’s allegations are examined below.

Exporters in the exporting country(ies)

35. The applicant claims that there is only one exporter of the imported product. Based on verified information from the State Statistical Service, as well as on an Internet search conducted by the Department, it can be gathered that there is only one exporter: [name]. This company is located in the Free Trade Zone.

List of incentives

36. Pursuant to the information contained in the application and the information collected by the Department, including that obtained from inquiries carried out with the Government of [...], the companies operating in the Free Trade Zone have access to the incentives provided by Decree No. 22-73, as amended by Decree No. 30-2008. Examination of said Decrees confirms the existence of incentives for the “institution” and the “users.” By “institution” it is understood [...]. The “users” are [...]. The following table shows the incentives to the “institution” and to the “users”.

Table X: List of incentives

Users	Institution
Article 32, item (a): Exemption from payment of Income Tax (duration: 10 years).	Etc.
Article 32, item (b): Exemption from payment of VAT, duties and other charges applicable to the importation of goods entering the Free Zone.	
Article 32, item (c): Exemption from payment of VAT levied on taxable items within the Free Zone.	
Article 32, item (d): Exemption from payment of Revenue Stamp Tax levied on documents containing acts or contracts relating to goods or businesses within the Free Zone.	

Article 32 <i>bis</i> : Exemption from payment of import duties, VAT and other taxes levied on the goods and other items or commercial papers, raw materials, inputs, materials, semi-manufactured products, intermediate products, packaging, as well as on the machinery, equipment, spare parts, accessories and other goods to be used in the activities set forth in Article 4 of the Act.	
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Source: Analysis by the Department

37. Based on the examination of the relevant legislation it is concluded that the framework of possible incentives at the disposal of the Free Zone's users is broader than the one initially contemplated in the application (limited to only three of all incentives).

Examination of the applicability of the provisions of the Law "On protection of national industry against subsidized imports"

38. The Law permits the imposition of countervailing duties against specific subsidies only (Articles 6-8). Therefore, it has been examined, on a programme-by-programme basis, whether a subsidy exists. This implies determining whether a programme constitutes a financial contribution by a government or by any public body that confers a benefit to the recipient of such contribution. Where all these conditions are met, the Department has further examined whether the subsidy is specific in the light of the definition of specificity contained in Article 8 of the Law. This examination has been carried out on the basis of an analysis of the information reasonably available to the applicant at this stage of the procedure and of other information which the Department has obtained *ex officio*. In particular, the following evidence has been examined:

- Decrees No. 22-73 and 30-2008,
- The development regulations of said Decrees contained in the Acuerdo Gubernativo No. 23-73, as amended;
- Various documentation relating to the applications for entering the scheme established pursuant to Decree No. 22-73,
- Website of the Ministry of [...];
- Website of the Central Bank of [...];
- etc.

39. Based on the analysis of available information, the Department has prepared the following analysis for each of the incentives identified in Table X *supra*:

Table X: Examination of the incentives under Articles 32 and 32 *bis* of Decree No. 22-73

Programme Description	Financial contribution? Yes/No	By the government or by any public body? Yes/No	In the territory of a Member? Yes/No	Confers a benefit? Yes/No	Is it a specific subsidy? Yes/No
Article 32:					
Item (a): Exemption from payment of Income Tax (duration: 10 years).	Yes. Type of FC: Foregoing or not collection of revenue which would otherwise be due.	Yes. Governmental authorities may establish or modify taxes.	Yes.	Yes. The FC places natural or legal persons eligible to receive the incentive in item (a) in a situation more favourable than that in which they would be if such incentive did not exist (to the extent that they would have to pay Income Tax).	Yes. This subsidy is limited to persons authorized to operate in the Free Zone.
Item (b): Exemption from payment of VAT, duties and other charges applicable to the importation of goods entering the Free Zone.	Taking into account that this exemption is one of the exemptions provided in Article 32 <i>bis</i> , see the analysis of such provision.				
Item (c): Exemption from payment of VAT levied on taxable items within the Free Zone.	Yes. Type of FC: Foregoing or not collection of revenue which would otherwise be due.	Yes. Governmental authorities may establish or modify taxes.	Yes.	Yes. The FC places natural or legal persons eligible to receive the incentive in item (c) in a situation more favourable than that in which they would be if such incentive did not exist (to the extent that they would have to pay the VAT levied on those items).	Yes. This subsidy is limited to persons authorized to operate in the Free Zone.
Item (d): Exemption from payment of Revenue Stamp Tax levied on documents containing acts or contracts relating to	Yes. Type of FC: Foregoing or not collection of revenue which would otherwise be due.	Yes. Governmental authorities may establish or modify taxes.	Yes.	Yes. The FC places natural or legal persons eligible to receive the incentive in item (d) in a situation more favourable than	Yes. This subsidy is limited to persons authorized to operate in the Free Zone.

goods or businesses within the Free Zone.				that in which they would be if such incentive did not exist (to the extent that they would have to pay RST).	
Article 32 <i>bis</i> :					
Exemption from payment of import duties, VAT and other taxes levied on the goods and other items or commercial papers, raw materials, inputs, materials, semi-manufactured products, intermediate products, packaging, as well as on the machinery, equipment, spare parts, accessories and other goods to be used in the activities set forth in Article 4 of the Act.	<p>Yes, at least in part.</p> <p>Type of FC: Foregoing or not collection of revenue which would otherwise be due.</p> <p>Note 61 delimitates the term “input” in order to determine whether an exemption or drawback system is considered a subsidy, according to note 1. The Department considers that packaging, machinery, equipment, etc., do not fall within the definition of “input” and, therefore, the exemption from payment of tariffs, taxes and other import charges applicable to the above constitutes a FC.</p> <p>As regards the fact whether the exemption from payment of taxes, tariffs and other import charges applicable to inputs, raw materials, semi-manufactured products and accessories is a not subsidy according to note 1 and, as such, not countervailable, is subject to meeting the requirements in Annex II to the WTO ASCM, that is to say, that there are verification mechanisms, that these are effectively applied, etc. This will be investigated further should the investigation be initiated.</p>	<p>Yes.</p> <p>It is the governmental authorities which establish taxes, duties and charges.</p>	Yes.	<p>Yes.</p> <p>The FC places natural or legal persons eligible to receive the incentive in Article 32 <i>bis</i> in a more favourable situation than that in which they would be of such incentive did not exist (to the extent that they would have to pay the applicable taxes, duties and charges relating to the machinery, equipment, spare parts, packaging, etc.)</p>	<p>Yes.</p> <p>This subsidy is limited to persons authorized to operate in the Free Zone.</p>

Source: Analysis by the Department

40. Based on the examination carried out by the Department of the available information, it is concluded that there is sufficient *prima facie* evidence, for the purpose of initiating an anti-subsidy investigation, that the incentives listed *infra* constitute specific subsidies pursuant to the Law "On protection of national industry against subsidized imports":

- List the identified subsidies.

Calculation of the amount of subsidy and the overall level of subsidisation

41. In order to calculate the subsidy amount and margin, the Department has first examined the nature of each of the subsidies enumerated in paragraph 40 *supra*. Second, the Department has assessed the information reasonably available to the applicant as well as information it could gather *ex officio*. This information includes as follows:

- Financial statement of the exporter
- Company tax rates from the website of the Ministry of Finance of [insert country]
- Etc.

42. Computation has taken into account the rules set forth in Articles 10-12 of the Law. The following table presents the calculations:

Table X: Calculation of subsidy margin

Program	Type of subsidy	Information available for the calculation	Margin of subsidy	Comments
Exemption from the payment of Income Tax	Exemption, remission or forgiveness of direct taxes	1) Public financial statements of the exporter for 2008 2) Income Tax rate applicable in 2009 available in the Ministry of Finance website	Pre-tax profits 2.5 million Income Tax rate: 30% Exemption value: 750,000 Margin of subsidy = value of exemption (750,000)/total value of exports (2 million) = 37.5%	The denominator is the value of exports, since it is a subsidy contingent upon export performance
Etc.				
Total:			%	

Source: Analysis by the Department

As observed in the preceding table, the margin of subsidy thus calculated is well above the *de minimis* level for developing countries (2%). In turn, the volume of allegedly subsidised glass bottles from [...] also represents more than 4% of the total volume of the product concerned that is imported into Ukraine from all countries (approximately 25%).

EVIDENCE OF INJURY

[IN THIS SECTION YOU WILL EXAMINE THE EVIDENCE ON INJURY MADE AVAILABLE IN THE APPLICATION AND, AFTER REVIEW OF ITS ACCURACY AND ADEQUACY, YOU WILL DETERMINE WHETHER THERE IS *PRIMA FACIE* EVIDENCE OF MATERIAL INJURY/THREAT THEREOF TO A DOMESTIC INDUSTRY. SET FORTH CLEARLY IN THIS REPORT ALL STEPS UNDERTAKEN TO CHECK THE ACCURACY AND YOUR FINDINGS OF WHY YOU BELIEVE THAT A DOMESTIC INDUSTRY IS SUFFERING INJURY]

43. The applicant has alleged that subsidised imports are causing material injury to glass bottle producers in Ukraine. The applicant has referred to the changes in the volume of allegedly subsidised goods and described the effects on the prices of like goods and the impact on the domestic industry. In support of its allegations and statements, the applicant has provided evidence of price depression and price suppression, as well as negative developments in its market share, production, sales, and profitability. The Ministry has carried out on-the-spot verifications of the information provided by the applicant below to ensure its accuracy.

Volume of Subsidised Goods

44. The volume of imports of the product concerned from [insert country(ies)] has grown significantly since 2005 and in particular during the first half of 2007. Based on the official import data from the State Statistical Service, the volume of imports of the product concerned made during the first half of 2007 alone has grown by 178% when compared to the volume recorded for the full 2006 year.

Price Effects of Subsidised Goods

45. The applicant further claims that the continuous decrease in the selling prices of the allegedly subsidised goods has caused the unit price of like goods in Ukraine to fall since 2005. The applicant referred to the average declared values of imports from [insert country(ies)] that show prices varying from UAH [X] per bottle in 2005 to UAH [X] per bottle for the first half of 2007.
46. The applicant explained that the competition from [insert country(ies)] has intensified since 2005. The applicant claims that the low priced imports from [insert country(ies)] are reflected in the quotes offered by an Ukrainian importer of the product concerned. As a consequence, the applicant is forced to further discount its prices in order to remain competitive and retain contracts. The applicant claims that this pattern has worsened through 2006 and early 2007. In support of these allegations, the applicant provided information showing a continuous decline in the average unit net selling prices per bottle during the period of 2005 to the first half of 2007. The applicant also provided specific examples where it lost possible sales due to subsidised imports from [insert country(ies)].

Market Share

47. The applicant claims that the increasing presence of the allegedly subsidised imports from [insert country(ies)] in the Ukrainian market since 2005 (and more apparent during the first half of 2007) have displaced its sales.
48. In support of these allegations, the applicant provided sales data and market information for the years 2005, 2006, and 2007. The information shows that the applicant's share of the Ukrainian market has been steadily declining since 2005 while imports of glass bottles from [insert country(ies)] have been capturing a larger share of the market over the same time period.

Production

49. The applicant claims that due to the increasing volume of imports, the applicant had to reduce production of the like product and that due to the bleak economic environment further decreases are expected. In fact, two of the seven applicant companies have stopped production until prices will recover and permit covering the full cost of production. In support of this allegation, the applicant companies have submitted their schedule of production for 2005 to 2007.

Sales Volume

50. The applicant also alleges domestic producers have suffered injury through having lost sales to an importer of the product concerned and that these lost sales have ultimately resulted in the applicant not capturing as large a portion of the Ukrainian market as it would have otherwise. In support of this allegation, the applicant provided examples, supported by documentation, of specific lost sales.

Price Suppression and Reduced Profitability

51. The applicant claims that the allegedly subsidised goods have resulted in reduced profits, both on a per-unit and on a total basis. In support of this allegation, the applicant provided its financial information for 2005 through 2007.
52. Financial data from the applicant indicate that profit margins on glass bottles have declined dramatically and that in 2007 applicant companies suffered significant losses.

Other factors

53. The applicant submitted injury information regarding the following variables: Some have performed positively ([cite]), other remained stable ([cite]) and finally several of them performed negatively ([cite].)

Conclusion

54. Based on the information provided in the application, which has been verified by the Department, as well as that gathered *ex officio* by the Department itself, the Ministry concludes that there is sufficient *prima facie* evidence pointing to the fact that the Ukrainian domestic industry is suffering material injury **[or threat of material injury]** to justify the initiation of an investigation. The decrease of the volume of sales and market share, which occurred at the same time [insert country(ies)] has increased its volume of exports to Ukraine, together with a sharp decrease in prices in the domestic market, as a result of the domestic industry's decision to try to maintain as many sales as possible, have led the domestic industry to incur significant losses on every glass bottle sold.

CAUSALITY

[IN THIS SECTION, PLEASE SUMMARISE ANY INFORMATION AVAILABLE IN THE APPLICATION REGARDING CAUSALITY AND EXPLAIN THE STEPS UNDERTAKEN BY THE DEPARTMENT IN ORDER TO EXAMINE WHETHER THERE WAS SUFFICIENT EVIDENCE ON CAUSALITY TO JUSTIFY THE INITIATION OF AN INVESTIGATION. BE SURE TO ALSO SPECIFICALLY EXAMINE FACTORS OTHER THAN SUPPOSEDLY SUBSIDISED IMPORTS THAT MIGHT BE CAUSING/CONTRIBUTING TO INJURY]

55. The applicant has alleged that the causal relationship between the subsidised imports and the effect of those imports on the domestic producers' situation cannot be denied. The applicant submits that the two events occurred at the same time. The applicant has not identified any other factor that in their view can have caused injury at the same time subsidisation was occurring.
56. For the purposes of initiation, the Department considers that the existing evidence proves that the situation of the domestic industry rapidly worsened since the [insert country(ies)] imports gathered pace. It is also proven that average prices of the product concerned from [insert country(ies)] have fallen sharply between 2005 and 2006, up to a point where in 2007 they were below the domestic industry full cost of production.
57. The Department has examined *ex officio* whether there were other factors that could be causing injury to the domestic industry. It has examined the development of imports of the product concerned from countries other than [insert country(ies)]. These imports have stagnated, representing approximately 10% of the total market share. At the same time, imports from [insert country(ies)] have increased from less than 1% in 2005 to 3.4% in 2007. What is more important, the average price of imports from "Other countries" is significantly higher than the average price of [insert country(ies)] glass bottles. With regard to the other factors mentioned in paragraph 7 of Article 13 of the Law, there is no information in the file indicating that any of those factors are present in this case. However, should the investigation be initiated, the Department will further investigate this matter.

Conclusion

58. The Ministry ... [include a conclusion on the existence of causality and the effect of other factors]

RECOMMENDATION TO THE COMMISSION

59. On the basis of the information and analysis included in this Initiation Report, the Department found that:
 - The applicant has standing to request the initiation of an anti-subsidy investigation in the terms of paragraph 8 of Article 15 of the Law, and
 - There is sufficient *prima facie* evidence of subsidisation, material injury and a causal link to justify the initiation of the investigation, as required in paragraph 3 of Article 15 of the Law.

60. Consequently, the Ministry herewith recommends the Commission that, in accordance with the powers conferred to it by paragraph 3 of Article 4 of the Law, it adopt a Resolution on the commencement of an anti-subsidy investigation on imports of [insert subject product] originating in, or exported from, [insert country(ies)]. The investigation conducted by the Ministry will assess whether the subject product originating in, or exported from, the country(ies) in question is being imported at subsidised prices and whether such subsidised imports are causing injury to the Ukrainian domestic industry.
61. The investigation will be considered formally initiated on the date the Public Notice of Initiation is published in the press of the Cabinet of Ministers of Ukraine. All time limits set forth by the Ministry in the context of the present investigation will start running as from that date.

PROCEDURAL PROVISIONS

Period of Investigation

62. The period of investigation for the purposes of determining subsidisation in the exporting country(ies) will be [insert e.g. January 2009 to 31 December 2009].
63. The period of investigation for the purposes of determining injury will be [insert, e.g. 1 January 2007 to 31 December 2009]. If there are subsequent events that are relevant to injury the Ministry may later request, and consider, more recent information.

Communications

[IF THERE IS *PRIMA FACIE* EVIDENCE THAT THE NUMBER OF EXPORTERS, IMPORTERS OR DOMESTIC PRODUCERS IS LARGE AND IF THE DEPARTMENT IS OF THE VIEW THAT INVESTIGATING ALL OF THEM WOULD NOT BE POSSIBLE IN VIEW OF THE FINANCIAL AND MAN-POWER RESOURCES AVAILABLE, THEN REPLACE THIS SECTION WITH ANNEXURE 1]

64. In order to obtain the information it deems necessary for its investigation, the Ministry will send a copy of this determination, a copy of the non-confidential version of the application and questionnaires to the authorities of the exporting country(ies) as well as to all known producers/exporters. Known importers and domestic producers of the product concerned, as well as any other known interested parties, will also be provided with a copy of this determination and other relevant documentation.
65. All interested parties are invited to contact the Ministry as soon as possible in order to determine whether they have been mentioned in the application and be furnished with the relevant documentation. The questionnaire has to be completed and any other representations must be made within the time limit set out below (see section “Time limits”).
66. All submissions and requests by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party.
67. All written submissions, including the information requested in this determination, questionnaire replies and correspondence provided by interested parties on a

confidential basis shall be clearly labelled as 'Confidential.' Non-confidential summaries will clearly read 'Public' (also see section "Confidential Information").

68. It is extremely important that the format prescribed in the questionnaires for submitting responses be adhered to. The Ministry may disregard information submitted that does not comply with the prescribed formats. Parties that experience difficulties in furnishing the information required, or in submitting information in the format required, are therefore urged to make written applications to the Ministry at an early stage for permission to deviate from the questionnaire or to provide the information in an alternative format that can satisfy the Ministry's requirements. The Ministry will give due consideration to such requests on good cause shown.
69. Questionnaire responses and other submissions, including annexes thereto, must be submitted in Ukrainian language. Information submitted in other languages will be disregarded, unless a translation thereof is provided, or unless the Ministry provides written permission in advance to submit data in other languages.

Confidential Information

70. In accordance with paragraph 2 of Article 31 of the Law, if a party considers that any information is confidential, then a non-confidential version of that information must be submitted for the public file, simultaneously with the confidential version. In submitting a non-confidential version, the following rules are strictly applicable and parties must indicate:
- where confidential information has been omitted and the nature of such information;
 - reasons for such confidentiality;
 - a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information; and
 - in exceptional cases, where information is not susceptible to summary, reasons why the information cannot be summarised must be submitted.
71. It is preferable that confidential information be indexed, wherever this is possible.
72. This rule applies to all parties and to all correspondence with, and submissions to, the Ministry, which unless indicated to be confidential, will be placed on the public file and be made available to other interested parties. If an adequate non-confidential version is not submitted, the Ministry may disregard—i.e. not take into consideration—the information contained in the confidential submission for which a non-confidential version is not submitted.

Time Limits

73. Responses to the questionnaires, including non-confidential copies of the responses, must be submitted to the Ministry within thirty (30) days from the date of receipt of the questionnaire, unless an extension is granted in writing by the Ministry. The questionnaire shall normally be deemed to have been received four (4) days after the day of its dispatch. Parties not directly notified of the initiation will normally have the same time limit from the publication of this determination to submit their responses.
74. Responses to additional requests for information from the Ministry must be submitted within the time limits specifically set forth by the Ministry in those requests.
75. Late submissions will not be accepted. Such submission will therefore not form part of the investigation file and will not be taken into consideration in determinations. The Ministry will give due consideration to written requests for an extension for

submission of questionnaire responses, and other additional requests, if good cause is shown and if properly motivated and substantiated, and if those requests are received prior to the expiry of the original deadline.

Consultations

76. In accordance with the WTO Agreement on Subsidies and Countervailing Measures, throughout the investigation, the country(ies) the products of which are the subject of the investigation will be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution. For that purpose, a country(ies) investigated must approach the Ministry and propose a date and an appropriate venue for such consultations.

Hearings

77. Interested parties may request an oral hearing during the course of the investigation in accordance with paragraph 6 of Article 16 of the Law. This exercised must be exercised in compliance with the requirements set forth in that provision. Additional hearings may be requested provided that an interested party shows that there are particular reasons why it should be heard. Parties requesting an oral hearing shall provide the Ministry with a detailed agenda for the information to be discussed at the oral hearing at the time of the request.
78. Separately, paragraph 6 of Article 16 of the Law gives interested parties the right to ask for a meeting with those parties with adverse interests. Parties wishing to make use of this right shall so inform the Ministry, indicating the precise issues that they would like to be covered in the meeting.

Verification

79. The information submitted by any party must be verified by the Ministry in order to take such information into consideration. The Ministry may verify the information at the premises of the party submitting the information or may conduct a desk verification. Parties should ensure that all information submitted will subsequently be available for verification, including all calculation sheets prepared in completing questionnaire responses.

Non-cooperation

80. In cases in which any interested party refuses access to, or does not provide, the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 30 of the Law, on the basis of the facts available.
81. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 30 of the Law, the result may be less favourable to that party than if it had cooperated.

Schedule of the Investigation

82. Normally, within one year from the date of initiation of an investigation, the investigation shall be completed and a determination on the imposition of definitive measures should be adopted. The Commission may, on the basis of preliminary findings of the Ministry, impose a provisional measure not exceeding the subsidy rate found to exist. However, no such measure shall be imposed before the expiry of sixty (60) days from the date of initiation of an investigation.

Submissions

83. The response to questionnaires and any information and/or any arguments concerning the allegation of subsidisation and the resulting material injury must be submitted in writing to:

Mrs. Olesya Bohdanivna Zaluska
Director, Department for Trade Protection
Ministry of Economic Development and Trade of Ukraine
Telephone: +38 044 596 68 01
Fax: +38 044 **[add]**
Email: ozaluska@me.gov.ua
Webpage: <http://www.me.gov.ua/>

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